

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KIZALEE NOBLIT,

No. 3:13-cv-00628-HU

Plaintiff,

**FINDINGS AND
RECOMMENDATION**

v.

CAROLYN W. COLVIN, Commissioner
of Social Security,

Defendant.

HUBEL, Magistrate Judge:

On August 15, 2014, Judge Anna Brown adopted this Court's Findings and Recommendation and remanded this matter to the Commissioner of the Social Security Administration ("SSA" or "Commissioner") pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings. Now before the Court is Plaintiff Kizalee Noblit's ("Plaintiff") application (Docket No. 30) for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 27 U.S.C. § 2412.

The EAJA requires an award of attorney's fees to the prevailing plaintiff in a social security case, "unless the court

1 finds that the position of the United States was substantially
2 justified or . . . special circumstances make an award unjust." 28
3 U.S.C. § 2412(d). While

4 the EAJA creates a presumption that fees will be awarded
5 to a prevailing party, Congress did not intend fee
6 shifting to be mandatory. The decision to deny EAJA
7 attorney's fees is within the discretion of the court. A
8 social security claimant is the 'prevailing party'
9 following a sentence-four remand pursuant to 42 U.S.C. §
405(g) either for further administrative proceedings or
for the payment of benefits. Fee awards under the EAJA
are paid to the litigant, and not the litigant's
attorney, unless the litigant has assigned his or her
rights to counsel to receive the fee award.

10 *Frazier v. Colvin*, No. 3:13-cv-00673-SI, 2014 WL 1571890, at *1 (D.
11 Or. Apr. 17, 2014) (internal citations omitted).

12 Plaintiff seeks an award of attorney's fees in the amount of
13 \$3,603.18 based on 19.25 hours of work (e.g., 15.30 hours
14 multiplied by the 2013 applicable statutory maximum hourly rate of
15 \$187.02, plus 3.95 hours multiplied by the 2014 applicable
16 statutory maximum hourly rate of \$187.79). The Commissioner
17 stipulates to the reasonableness of the requested fees. The Court
18 has reviewed Plaintiff's motion and agrees with the parties that
19 the EAJA petition is proper and the amount requested is reasonable.

20 Accordingly, Plaintiff's application (Docket No. 30) should be
21 GRANTED. Plaintiff should be awarded \$3,603.18 in attorney's fees
22 under 28 U.S.C. § 2412. As discussed in *Astrue v. Ratliff*, 560
23 U.S. 586, 593-94 (2010), EAJA fees are subject to any offsets
24 allowed under the Treasury Offset Program. EAJA fees are awarded
25 to Plaintiff's attorney in light of the assignment executed by
26 Plaintiff on April 5, 2013. The Commissioner shall, therefore,
27 cause the payment of fees, after any applicable offsets, to be made
28 payable to Plaintiff's attorney, Merrill Schneider.

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due **December 19, 2014**. If no objections are filed, then the Findings and Recommendation will go under advisement on that date. If objections are filed, then a response is due **January 5, 2015**. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

/s/ Dennis J. Hubel

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